mittees who have charge of the four subjects designated upon the program will make their reports. I will have something to say about that before calling upon them to make their reports.

I now have the pleasure of calling upon Baron Korff, Professor of Political Science in the School of Foreign Service of Georgetown University.

THE EQUALITY OF STATES

ADDRESS BY BARON S. A. KORFF

Professor of Political Science in the School of Foreign Service of Georgetown University

Mr. Chairman, ladies and gentlemen: It was with a feeling of distinct hesitation that I decided to tackle the question on the program this evening, and for several reasons, not only because I knew that I would be faced by an eminent audience, having in its midst some of the foremost specialists in the United States, and that I had to deal with the most intricate questions of international politics, but because I realized that in a way I would have against me the policies of certain great Powers, and finally because the main principle is still controversial. Yet I gathered up my courage because I considered that now is the time more than ever to discuss this principle. International law, after the great war, is very slowly but gradually picking up and being reconstructed, and it is time to consider the main and basic principles.

In this respect two questions stand out preëminently in my mind. First of all, Is any legal order, such as we would like international law to stand for, possible without the principle of equality? It is no mere coincidence that in this respect our thoughts go back to the eighteenth century, and we think of the father of the theories of personal freedom, Samuel Pufendorf, and that these questions of personal freedom are very closely connected with the important principle of the equality of states.

The second question that comes to my mind is of a political nature, Is the conception of inequality harmless? And I answer it also in the negative. I think that it bears some very great dangers for the ideas of international law. Not so long ago there was made a valiant attempt to analyze and study this domain. A book was written that I read with the greatest pleasure,[1]—constructive, stimulating, interesting; every page I found enthralling; and yet when I had read it through and put it down, I put it down with a certain feeling of dissatisfaction. It ought to have a second volume with more definite conclusions.

The source of trouble in this question is the growth of the so-called great Powers. There formed gradually in the nineteenth century a small group of nations that were imposing their will and policies on the rest of the world, like a sort of self-appointed executive committee; that policy was constantly

[1] E. D. Dickinson, The Equality of States in International Law.

threatening the rights of small nations, and depriving them of sufficient safeguards for their existence. If you take the history of the nineteenth century you will see that the legal principle was more or less admitted everywhere, that equality as such ought to exist among the states, but no special definition of it is given. Unfortunately, the political principle of dominance was constantly and strongly overshadowing it and thwarting it. After 1900 that system gradually crystallized in a definite group, which for the first time felt itself as such in 1907, at the second Hague Conference. At the first Hague Conference the elements of the system were perhaps already in existence, but they were not so evident then, because at that first Conference great Powers alone were participating almost exclusively. At the second Conference there were thirty-odd small ones around them. Thus the glaring contradiction between the great and the small became evident to the outside world. There were eight of the great Powers at that time, Germany, Austria-Hungary, the United States, France, Great Britain, Italy, Japan and Russia.

That system was from the point of view of international law best described by a Russian, Professor Hrabar of Dorpat. Unfortunately, his work has never been translated. His idea was that the comity of nations cannot be constructed on the monarchical principle; that it ought never to be constructed on the democratic principle, and that aristocracy, in consequence, was the only right principle for any international organization; in other words, the latter ought to be governed by a small group of nations. According to the old principle, when large dogs fight the small ones keep at a respectful distance. Unfortunately, once in a while there is an angry snap at them and they always get the worst of it. Most people now realize that the second Hague Conference failed. It failed for two reasons: first of all, because Germany rebelled at the idea that a powerful nation should willingly renounce for the general good part of its freedom of action. On the other hand, the second reason was eloquently put forward by the Brazilian, Barbosa; it was the small nations fear of the great ones. The small ones protested right along and protested to such a degree that it amounted to declining to participate in such a combination.

And that brings us into the very heart of the question. On the one side you have the great Powers claiming freedom of action. On the other side you have the small ones afraid of the larger ones and asking for justice and equality.

It is a great problem that confronts us. In very many questions of modern law you have the same problem exactly; for instance, in constitutional law, what shall we do with the idea of sovereignty? Many thoughtful scientists have it weighing heavily on their minds, how to adapt our new ideas to the old conceptions of unlimited power of the state. It is most vital to bring in limitations that we all feel are so necessary, but so few have yet found the right method to do it.

Two facts will strike us at once as outstanding in their significance in this respect. I mentioned the eight great Powers that were leading the world in 1907. Where are they now? How many of them are left? Three of them have disappeared as great Powers, possibly forever,—Germany, Russia, Austria-Hungary. There remain five. Out of the five, two are distinctly lagging behind, so much so that many persons question the fact of their belonging any more to the group of great Powers. There remain thus three, and even among the survivors one has to deal at present with most serious problems of disintegration. We distinctly see that in the British Empire the centrifugal forces dominate. We see that Egypt is lost. We see that India is seething with discontent. And the other day I heard somebody say that even Ireland had its troubles! What do these processes mean? They mean that only three great Powers are left. Can they lead the world? Can one construct a system of international law on the basis of two or three great Powers leading the rest?

On the other hand, we find the second undeniable fact: the great war has brought about the destruction of four empires—three of them belonging to the former great Powers, plus Turkey. The destruction was so effective that it created dozens of new states, all of them small ones; and every one of these small nations in its process of self-determination (whatever that means) is clamoring for equality, for independence, for legal guaranties, that the remaining big ones should not attack them or curtail their rights. Much of the trouble of the present day depends upon that readjustment of the different nations which have not yet found their equilibrium. For instance, here alone lies the cause of the failure of the League of Nations. First, the great Powers are fearing to lose their dominance. Secondly, they are fearing the restriction of their freedom of action. And thirdly, and mostly, they are fearful that the small states in the international organization of the League of Nations should, by mere majority, enforce their will and curtail the liberty and freedom of the great Powers. On the other hand, the small ones feel that they do not yet find the protection of their rights and of their equality.

If we analyze the objects of the science of international law, I think we might say that it consists not only, as some assert, of the interpretation of the existing legal order; science not only interprets, but has also to formulate and crystallize principles and ideals. Science in that meaning has to lead. I am not much impressed by the argument that equality is a fiction, and at that never very consistently observed. So are the Ten Commandments, which are not very consistently observed either.

I think that the great war confirmed more than anything else the very important truth that social processes and the development of humanity are going along the lines of general evolution, and that these forces are not blind ones, that they are not uncontrollable, as thunder-storms or tornadoes, that the human intellect can rationalize them; and if man can rationalize these forces, it means that we can influence them, that in understanding them, we

can bring about changes. It is for science to define the aims and ideals and it is for the statesmen to devise the means to follow them up and achieve them, to subdue the forces of nature to the human will and to make them serve our interests. In our field of international law it would mean that in the maze of inequalities (who would deny that life consists only of differentiation and inequalities?) science must find and point out the principles and ideals, just as in physical life the human mind creates the types and species, but with this difference,—that in the social sciences we always and invariably attach a valuation to our ideas; we create moral values, simultaneously with the principles and ideals.

In this case the principle would be of the equality of states, because the opposite idea leads to the worship of force; there ought to be no mistake about it. My late friend, Senator Nys of Brussels, gave long ago the warning, that the practice of inequality impairs the principle of equality.

Now I would like to draw your attention to another fact, a significant change that has come about in certain quarters. I take the French science of international law, and I choose a name from the foremost ranks,—Professor Pillet. Pillet asserted not so long ago that "the great Powers exercise an indisputable preponderance and regulate at their pleasure the collective interests of the other states." Please note that "the great Powers exercise an indisputable preponderance," which is *force*, and that "they want to regulate at their pleasure the interests of other states,"—just what the small ones are most afraid of. Another well-known and esteemed Frenchman, the late Professor Renault, compared Montenegro and Luxemburg to Great Britain, saying: "Would it not seem preposterous to give them an equal vote in maritime warfare?" Montenegro had a small power-boat on the only lake they have. Luxemburg possibly did not have even that. Naturally this seems preposterous, but it is entirely outside of the question. A few years have passed, the great war has taken place, and we find now in the book of another Frenchman, Charles Dupuis[2], on page 479, that he frets at the "actual anarchy of sovereignties which do not give any guaranties whatsoever to the small nations." This seems an entirely different point of view! There is no trace left in Dupuis' words of the former assurance of the seeming sanctity of the preponderance of the great Powers, as there was in the statement of Pillet.

At the same time we need not underrate the theoretical influence of science on practical life. There were several instances when it proved very beneficial. The best example in this respect is the work of the Brussels Conference that codified the laws of land warfare in 1874. How was it done? An American (Lieber) worked out the project of codification; a German (Bluntschli) adapted it to European ideas of the day; and a Russian (Martens) brought it up at the Brussels Conference and carried it through, achieving an

[2] *Le Droit des Gens et les Rapports des Grandes Puissances avec les autres États avant le Pacte de la Société des Nations.*

agreement of nations which was the first real step in the codification of international law. If Martens had not done anything else in his life, he would still be one of the greatest lawyers in the field of international law by having done that. One can find many more such examples, so very encouraging for the students of international law.

Unfortunately, in the vast literature of international law, the main question still remains open; there are still many doubts as to its legal definition. Where is the criterion, anyway, of equality? Certainly not in the strength or power of the nations. Is it a right, or is it an attribute? Or is it the capacity of having rights? It is the main principle that is still in question, the principle of equality before law, which is not yet firmly established.

Summing up, we can thus say that in the course of the nineteenth century certain processes were taking place in the comity of nations, which tended to create a definite preponderance of the so-called great Powers over the other nations; and there were several attempts made in the scientific literature to sanction these developments, by creating a corresponding legal theory, and to question the ideal of the equality of states as unreal and unnecessary. It called forth, however, among the smaller states some very vigorous protests and partly wrecked the work of the second Hague Peace Conference. The great war and the ideas of modern times brought with them further changes; stupendous forces of disruption and disintegration set in everywhere, some of the mighty former empires entirely disappeared and crumbled away, others were considerably weakened and are still fighting against further dismemberment. In other words, the former preponderance of the great Powers underwent a severe test or challenge; their number dwindled down to a mere handful. On the other side, we can witness at present a great increase in numbers of the smaller states, each one of which loudly clamors for independence, equality and safe guarantees of its rights. All of these processes naturally enhance and strengthen the meaning of the ideal of equality and the importance of its theoretical definition and practical application in international relations and international law.

And again, involuntarily, our thoughts go back to the eighteenth century, when the great fight for human liberty was taking place. I think that in the family of nations, though perhaps on a smaller scale, but with a grander object, the same process is going on at the present day. The smaller nations are fighting for their freedom and for their independence, determined to put an end to or at least definitely to curtail the dominance of the great Powers.

I find that the idea of equality in this respect has a double meaning. One is negative, the other one positive and active. The negative side is the principle of equality before law, and I am sure that we can consider that at least this is clear and more or less accepted everywhere: all the members of the family of nations, whatever their size or power, strength or past history, all are to be treated as equals before the law of nations. The trouble comes,

however, when we tackle the other part of the question, the active side, namely, the question of participation in the international organization. On what principle can it be built up if one does not guarantee equality first? I do not think that any other way out can be found. The historical parallel with the eighteenth century is very striking in this case. Then, as now, the fight for freedom started with the struggle for equality before the law, which object was accomplished finally by the French Revolution. Then only started the second, protracted struggle, for the participation of the citizens at large in the organization and functioning of the state. The ideal of universal suffrage, for example, played a very important rôle during this second phase, and it took some fifty long years, before these new principles of public law found their acknowledgment; only after the numerous revolutions of 1848 did the new democratic ideals find their final place in constitutional law.

At present, it seems to me, that in the field of international law we have entered a similar second period, when the nations, having accepted the idea of equality before the law, are now struggling for the acknowledgment of the active side of the same principle, of the equality of participation in the international organization of the comity of nations; only on those lines can international law develop in the future. In following up and studying these processes let us always keep in mind the most beautiful constitutional article ever written. I mean Article 30 of the Constitution of Massachusetts of 1780, where it is said so plainly and yet so splendidly that the Commonwealth of Massachusetts is being established "to the end that it should be a government of laws and not of men." I thank you.

The CHAIRMAN. Now the reports to the Society of the subcommittees of the Committee for the Advancement of International Law are in order. These reports will constitute the beginning of the most important work that this Society has undertaken. They look forward, prepare the way, as you will see, for that system of the law of nations which we hope will develop so that the world will be brought under the government of laws. Of course, private organizations like we are are not law-makers, but law-makers of the nations, their official representatives, cannot proceed without the study of the science of international law. In any advances in international law that have been made, the field had first to be ploughed by specialists and students so as to make legislation possible. We are proceeding logically on that ground, and we are fortunate in having four distinct committees who have studied the several subjects that have been assigned to them, with a distinct chairman of each, who will now begin to plough the ground for the development of international law. This is the great work of the future.

I now have the pleasure of asking the chairman of subcommittee No. 1 to make his report. That subcommittee's thesis is to restate the established rules of international law especially, and in the first instance, in the fields affected by the events of the recent war. Former Ambassador David Jayne Hill is its chairman.